
TITLE 327 WATER POLLUTION CONTROL BOARD

Proposed Rule
LSA Document #05-218

DIGEST

Amends [327 IAC 2-1-3](#), [327 IAC 2-1-10](#), [327 IAC 2-1.5-5](#), [327 IAC 2-1.5-18](#), and [327 IAC 5-2-10](#) and adds [327 IAC 2-1-3.1](#) concerning the establishment of a combined sewer overflow (CSO) wet weather limited use subcategory and permit compliance schedules for qualifying communities affected by CSOs. Effective 30 days after filing with the Publisher.

HISTORY

First Notice of Comment Period: September 1, 2005, Indiana Register (28 IR 3685).
Second Notice of Comment Period and Notice of Public Hearing: May 1, 2006, Indiana Register (29 IR 2688).
Change in Notice of Public Hearing: June 1, 2006, Indiana Register (29 IR 3038).
Change in Notice of Public Hearing: July 1, 2006, Indiana Register (29 IR 3405).
Date of First Hearing: August 9, 2006.

PUBLIC COMMENTS UNDER [IC 13-14-9-4.5](#)

[IC 13-14-9-4.5](#) states that a board may not adopt a rule under [IC 13-14-9](#) that is substantively different from the draft rule published under [IC 13-14-9-4](#) until the board has conducted a third comment period that is at least 21 days long.

REQUEST FOR PUBLIC COMMENTS

This proposed (preliminarily adopted) rule is not substantively different from the draft rule published on May 1, 2006, at 29 IR 2688; however, the Indiana Department of Environmental Management (IDEM) is requesting comment on the entire proposed (preliminarily adopted) rule. This notice requests the submission of comments on the entire proposed rule, including suggestions for specific amendments. These comments and the department's responses thereto will be presented to the board for its consideration at final adoption under [IC 13-14-9-6](#). Mailed comments should be addressed to:

LSA Document #05-218 [CSO Wet Weather Subcategory]
MaryAnn Stevens
Rules Section
Office of Water Quality
Indiana Department of Environmental Management
100 North Senate Avenue
MC 65-40
Indianapolis, Indiana 46204-2251.

Hand delivered comments will be accepted by the IDEM receptionist on duty at the twelfth floor reception desk, Office of Water Quality, Indiana Government Center-North, Room N1255, 100 North Senate Avenue, Indianapolis, Indiana. Comments may be delivered by facsimile to (317) 232-8406. Please confirm the timely receipt of faxed comments by calling the Office of Water Quality Rules Section at (317) 233-8903. Please note it is not necessary to follow a faxed comment letter with another sent through the postal system.

COMMENT PERIOD DEADLINE

Comments must be postmarked, hand delivered, or faxed by November 22, 2006.

SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD

The Indiana Department of Environmental Management (IDEM) requested public comment from May 1, 2006, through May 30, 2006, on IDEM's draft rule language. IDEM received a comment letter from the following party by the comment period deadline:

City of Indianapolis (INDPLS)

Following is a summary of the comments received and IDEM's responses thereto:

Comment: The City of Indianapolis strongly supports this rulemaking to establish the CSO wet weather limited use designation as a subcategory of the recreational use designation within the State of Indiana's water quality standards. This rulemaking is consistent with the intent of the federal and state CSO policies that promote the review and revision of water quality standards in conjunction with Long Term Control Plan planning and implementation. This rulemaking is a major step in providing municipalities all across Indiana with the means to make significant improvements to the quality of the waters of the state by removing the threat of chronic noncompliance even when LTCPs are fully implemented. (INDPLS)

Response: IDEM agrees that this rulemaking provides an important option to communities as they work to eliminate combined sewer overflows.

Comment: The second notice of comment period contains a statement that the concept of a CSO wet weather limited use subcategory of the recreational use designation is not explicitly identified in federal law. The federal law does grant states the authority to define designated uses for their waterways, including subcategories of uses. U.S. EPA's "CSO Control Policy" (April 1994) and "Combined Sewer Overflows: Guidance for Long Term Control Plan" (September 1995) both discuss the need for the review and appropriate revision of water quality standards in conjunction with CSO planning. More recently, U.S. EPA's "Guidance: Coordinating CSO Long Term Planning with Water Quality Standards Reviews" (July 2001) noted several options for waterways where a state has demonstrated through a UAA that primary contact recreation is not feasible at all times, including a CSO subcategory of the recreational use. In order to avoid misunderstanding among those reading the rule, federal guidance and policy authorizing the subcategory approach should be noted in the rulemaking. (INDPLS)

Response: IDEM agrees that all interested persons should have access to as much information as possible in this complex area of the law. The statement regarding what is identified in federal law goes to the issue of fiscal impacts of rules. IDEM is statutorily required to identify each element of a rule that is either not required under federal law or is more stringent than federal law. IDEM agrees that a more complete explanation is necessary to avoid confusion by those reading the rulemaking documents.

Comment: The draft rule needs clarification regarding the timing of the LTCP development, approval, and implementation and the corresponding UAA development and approval in order for the waterbody to be granted the CSO wet weather limited use subcategory designation. According to the SEA 620 legislation passed in 2005, the NPDES permit holder may develop the LTCP and UAA concurrently and seek approval for both concurrently. Once the UAA is approved, the state must begin the rulemaking under [IC 13-14-9](#) to amend the designated use to a CSO wet weather limited use designation. The intent of this rulemaking is to prescribe that the UAA can be approved at any time before the LTCP is fully implemented provided that the LTCP is approved. However, at [327 IAC 2-1-3.1](#), the draft rule language appears somewhat confusing because it does not explicitly outline the approval process for the UAA. [327 IAC 2-1-3.1\(b\)](#) could be construed that the UAA approval would not be granted until full LTCP implementation is accomplished while the rule language at [327 IAC 2-1-3.1\(d\)](#) implies that the UAA can be approved prior to full implementation and can be approved concurrently with the LTCP approval. The City of Indianapolis strongly endorses the interpretation that the UAA and LTCP can be concurrently approved and believes it is the interpretation that is consistent with the language of SEA 620. (INDPLS)

Response: It was not the intent of the rule to indicate that a UAA may not be approved until full implementation of the LTCP. [IC 13-18-3-2.3](#) requires IDEM to review a UAA concurrently with a LTCP. The draft rule language will be amended to reflect this clarification.

SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On August 9, 2006, the Water Pollution Control Board conducted the first public hearing/board meeting concerning the establishment of a combined sewer overflow (CSO) wet weather limited use subcategory and permit compliance schedules for qualifying communities affected by CSOs. Comments were made by the following parties:

Tom Anderson, citizen (TA)
Constance Clay, Save the Dunes Council (SDC)
Charlotte Read, citizen (CR)
Jim Meyer, citizen (JM)

Following is a summary of the comments received and IDEM's responses thereto:

Comment: Michigan City is a CSO community that has been dealing with the issue of overflows for a very long time. The issue is very important to Michigan City because it is a municipality with beaches along Lake Michigan. Michigan City, with no use of federal money, has been able to provide significant reductions in the amount of its sewage overflows over the last five or six years due to bonding for an overflow basin of about seven million gallons. IDEM should be encouraging communities to follow creative solutions to the CSO problem so that a disincentive is not created for making treatment system improvements without suspending a use to meet a requirement. It is not fair treatment of Michigan City that has dealt with the CSO problem while other communities rely on delay or avoidance of solving the problem. More technical assistance should be provided to communities to utilize the MS4 storm water program to reduce the amount of storm water that ends up in sewer systems. The Michigan City headwaters have been redesigned so that the overflow basin receives some of the storm water at least to be given primary treatment. Protection of downstream uses is critical especially when the downstream community has public bathing beaches that have a significant economic impact on the local community and the state as a whole. There are some very expensive ways to solve the CSO problem, but, from the view point of a beach community that has already accomplished a large corrective measure in dealing with the problem, the message needs to be promoted that there are alternatives as well for affecting solutions. (TA)

Response: IDEM agrees that it is important to explore creative solutions to this difficult problem. Each CSO community faces different challenges and it is IDEM's goal to provide a suite of tools and options for the

communities to address the CSO problem. This rule is not intended to promote delay or avoidance of the problem. Rather, it is designed to be another option available to communities to encourage the development of long term control plans that will improve water quality.

Comment: Save the Dunes Council recognizes the complicated issue of combined sewer overflows but hopes that IDEM will work to ensure that the State of Indiana upholds the provisions to protect the waters of Indiana as set forth in the Clean Water Act. The draft rule clearly delineates the requirements a CSO community will need to satisfy in order to receive a wet weather limited use designation; however, Save the Dunes proposes the inclusion of the following additional language to [327 IAC 2-1-3.1\(a\)](#), "and that such limited use subcategory will not negatively affect the capacity of downstream waters to meet their full recreational designated use." (SDC)

Response: In order to obtain the wet weather limited use subcategory, a CSO community must perform a use attainability analysis, which includes an analysis on the effects of the community's CSOs on downstream users. Clearly, this rule cannot violate the tenets of the Clean Water Act, and IDEM is working with EPA in the development of this rule language to assure compliance with the Act.

Comment: The primary focus should be on preventative, cost-effective measures for reducing storm water overflows into the treatment system to allow the treatment facility to adequately process municipal sewage. It is paramount to find ways to mitigate excessive amounts of water going into the sewer system. Over the last several years, Save the Dunes and other conservation organizations in Northwest Indiana have been working diligently in designing strategic conservation programs with on-the-ground implementation, such as storm water management plans and watershed conservation, which directly address impervious surface run-off and storm water retention in order to protect the quality of valuable water resources in this region. IDEM should capitalize on these conservation efforts as a means of developing long-term goals that will not compromise the integrity of noncompliance mandates to ensure the economic vitality of our cities, the health of the public, and the waterbodies of Indiana. (SDC)

Response: IDEM agrees that water conservation programs along with effective storm water management plans are vital components in the strategy to address water quality in Indiana. IDEM hopes to provide communities with the opportunity to integrate storm water management with CSO control as well as other creative options for improving water quality. Storm water inflow is one component to be addressed in each CSO community's long term control plan.

Comment: There can be no reasonable discussion of protection for existing uses and the level of water quality to protect those uses without a solid antidegradation policy in force. It is recommended that IDEM take measured steps to develop and implement an antidegradation policy to ensure water quality standards are upheld in Indiana. (SDC)

Response: IDEM agrees and work on the statewide antidegradation rulemaking is moving forward. There currently exists an antidegradation policy for the GLI basin, which includes northwest and northeast Indiana.

Comment: The economic vitality in the Northwest region is central to the water quality in Gary; therefore, this rule to change the designated recreational use to limited use, while proposed because of combined sewer overflows, needs to recognize that serious effort should be put forth toward conservation efforts that would mitigate the storm water overflows to allow the facility to treat the sewage it receives. (SDC)

Response: IDEM agrees that conservation and storm water management plans are important components in improving Indiana's water quality. Such plans should be part of CSO communities' long term control plans.

Comment: The time this rule allows for communities to develop long term control plans creates the problem of allowing the communities to drag their feet rather than finding creative ways to deal with their storm water problems. (SDC)

Response: That is not the intention of this rulemaking. The fact is that fixing Indiana's antiquated CSO systems is an expensive and difficult problem. IDEM recognizes that communities must balance infrastructure improvements that will lead to environmental improvements with the many other problems competing for taxpayer dollars. This rule does not, in itself, provide additional time for communities to develop and implement long term control plans. By providing certainty as to the process and the expectations IDEM holds for these communities, it is IDEM's hope that the rule will actually encourage quicker development and implementation of these plans, which will lead to improved water quality.

Comment: The proposed creation of a limited use recreational category is a downgrade of water quality in streams now receiving combined sewer overflow discharges from one hundred five (105) communities. Such a rule violates both the spirit and intent of the Clean Water Act. Water quality standards are intended to protect not only designated uses but existing uses as well. If full body contact recreation is an existing use in the affected streams, how does this proposed new recreational subcategory protect that existing use? (CR)

Response: Full body contact recreational is a designated use, not an existing use. The Clean Water Act allows for use designations to be changed if a use attainability analysis is performed, as reflected in this rulemaking. Waters receiving CSO discharges during wet weather events are not safe for recreational use and the use designation should be reflective of the actual use attained. If the use attainability analysis done by a CSO community does not support the granting of the wet weather limited use designation during wet weather events, no use designation change will be granted.

Comment: Is the goal of long term control plans the elimination of CSO discharges? The proposed rule does not have that as a goal. (CR)

Response: The goal of long term control plans is to ensure that CSOs meet water quality standards. This can be accomplished by methods other than complete elimination of the CSO. If the CSO discharge is treated, the impact of the CSO is eliminated and the goal of achieving water quality standards is accomplished.

Comment: It is unclear what are the water quality standards for the stream during the four days after the CSO discharge ends while the limited use recreational category would remain in effect. Would the standard protect partial body contact? Would it ban recreational contact with the water? Would it ban fishing or boating? (CR)

Response: The exact standards to apply during the wet weather limited use subcategory have not been determined.

Comment: The proposed rule does not address the issue of protecting downstream uses during and after the four days while the limited use recreational category would remain in effect. However, [327 IAC 2-1-10\(b\)\(1\)\(E\)](#) requires the commissioner to consider, among other factors, whether potential or existing use made of the waterbody by people in the immediate areas would not be adversely affected by a limited use designation. (CR)

Response: In order to obtain the wet weather limited use subcategory, a CSO community must conduct a use attainability analysis, which includes an analysis on the effects of CSO outfalls on downstream users. Therefore, the effects will be considered before the limited use designation will be granted.

Comment: Many of the numerous beach closures and swimming bans at Lake Michigan beaches are the result of CSO discharges to Lake Michigan tributaries which end up affecting recreational water quality and public use and enjoyment. The Clean Water Act was amended several years ago to enhance protection of coastal beaches, including those on the Great Lakes. As well, the impact of CSO discharges on Lake Michigan water supply intakes is a concern and must be considered even if public water supply safety is not a recreational use. (CR)

Response: The purpose of this rulemaking is to allow communities to move forward with the development and implementation of long term control plans designed to reduce or eliminate CSO overflows and improve water quality.

Comment: Lake Michigan, parts of the Little Calumet River, and Salt Creek are designated Outstanding State Resource Waters (OSRWs) and are entitled to additional protection. Indiana's Great Lakes rules for water quality are the only Indiana water rules presently addressing antidegradation protection. That protection is enhanced when OSRWs are affected by antidegradation protection and by discharges. How does this rule protect OSRWs and antidegradation standards? (CR)

Response: This rule does not violate the GLI antidegradation standards nor provide less protection to OSRWs than what is already provided. The intent is to provide a process whereby CSO communities can move forward with long term control plans as required by the Clean Water Act.

Comment: Do these proposed rules and rule amendments offer improved water quality for our waterways including Lake Michigan? (CR)

Response: Ultimately this rule will improve water quality. It provides another option to CSO communities that are trying to develop and implement long term control plans that will improve water quality.

Comment: Is development and implementation of a limited use recreational subcategory considered backsliding? (CR)

Response: The Clean Water Act allows for amendment of a designated use through the development of a use attainability analysis. The granting of a wet weather limited use designation would not occur if it were determined that such a designation constituted backsliding under the Act.

Comment: Does IDEM know the time frames included in long term control plans? Is it as much as or more than thirty years? (CR)

Response: Each CSO community is different and therefore it is difficult to generalize on time-frames. Each community is required to develop plans which include a detailed analysis of the technical and financial feasibility of the plans.

Comment: Long term control plans, use attainability analyses, and a limited use recreational subcategory for one hundred (105) dischargers of combined sewer overflows will never solve the CSO problem nor substantially improve it until IDEM and the Water Pollution Control Board deal with the long-standing practice of CSO communities who continue to add new sewer connections to their combined systems thereby exacerbating the problem. (CR)

Response: One of the purposes of the long term control plan is to plan for future growth as well. IDEM is aware that there are many stressors to Indiana's waters, but providing a process for CSO communities to move forward with plans to improve CSO control is a positive step in improving the water quality.

Comment: By being willing to accept something less than the perfection of fishable and swimmable waters required under the Clean Water Act, state legislation under Senate Enrolled Act 620 and this proposed rule will allow communities to develop long term control plans and actually implement those plans by building the very structures, equipment, and fixtures that would, in fact, help clean up the water. For years, municipalities that were attempting to develop and implement long term control plans but were not able to demonstrate that they would in

the end eliminate CSOs could not receive IDEM's approval. As a result of not having approved long term control plans, no implementation was undertaken of any means of CSO reduction. SEA 620 and this proposed rule will finally allow implementation to occur because the rule says that only after a community has fully implemented its long term control plan does it have a right to some relief in the form of the limited used subcategory. For this reason, the Water Pollution Control Board should support and pass this proposed rule. (JM)

Response: IDEM agrees that the "all or nothing" approach has not been effective in helping CSO communities move forward to solve this difficult problem. By requiring full implementation of the approved long term control plan prior to granting a limited use designation, IDEM believes significant improvement in water quality will be achieved. Communities are not required to apply for the designation and many may not need to due to the improvements in water quality achieved through the implementation of the long term control plan.

Comment: One of the requirements of the long term control plan is to demonstrate that all reasonable possible alternatives have been considered in deciding what controls the community is going to implement. The storm water program has sought to address the area of run-off, but it too is linked to the CSO problem. For example, Gary has cut its combined sewer overflows by around sixty (60) percent over the last six years. However, it still discharges about three to four million gallons in an average year. At the same time, it must be recognized that Gary has combined to treat eight and a half (8.5) billion gallons of storm water which under a separator system would go directly into the river. The increased amount of storm water, while not the same as CSO, is a significant contributing factor to the degradation of the water quality in streams, rivers, and lakes. There should be an overall analysis of the waste that is allowed under this process. (JM)

Response: IDEM agrees that CSO control is one important way to improve water quality, but other issues such as storm water management and non-point source control measures are necessary components of a comprehensive water quality improvement plans.

[327 IAC 2-1-3](#); [327 IAC 2-1-3.1](#); [327 IAC 2-1-10](#); [327 IAC 2-1.5-5](#); [327 IAC 2-1.5-18](#); [327 IAC 5-2-10](#)

SECTION 1. [327 IAC 2-1-3](#) IS AMENDED TO READ AS FOLLOWS:

[327 IAC 2-1-3](#) Surface water use designations; multiple uses

Authority: [IC 13-14-8](#); [IC 13-14-9](#); [IC 13-18-3](#)

Affected: [IC 13-18-4](#)

Sec. 3. (a) The following water uses are designated by the water pollution control board:

(1) **Except as provided in subsection (c)**, surface waters of the state are designated for full body contact recreation as provided in section 6(d) of this rule.

(2) All waters, except as described in subdivision (5), will be capable of supporting:

(A) a well-balanced, warm water aquatic community; and

(B) where natural temperatures will permit, ~~will be capable of supporting~~ put-and-take trout fishing.

All waters capable of supporting the natural reproduction of trout as of February 17, 1977, shall be so maintained.

(3) All waters ~~which~~ **that** are used for public or industrial water supply must meet the standards for those uses at the points where the water is withdrawn. This use designation and its corresponding water quality standards are not to be construed as imposing a user restriction on those exercising or desiring to exercise the use.

(4) All waters ~~which~~ **that** are used for agricultural purposes must, as a minimum, meet the standards established in section 6(a) of this rule.

(5) All waters in which naturally poor physical characteristics (including lack of sufficient flow), naturally poor chemical quality, or irreversible man-induced conditions, which came into existence ~~prior to~~ **before** January 1, 1983, and having been established by use attainability analysis, public comment period, and hearing:

(A) may qualify to be classified for limited use; and

(B) must be evaluated for restoration and upgrading at each triennial review of this rule.

Specific waters of the state designated for limited use are listed in section 11(a) of this rule.

(6) All waters ~~which~~ **that**:

(A) provide unusual aquatic habitat; ~~which~~

(B) are an integral feature of an area of exceptional natural beauty or character; or ~~which~~

(C) support unique assemblages of aquatic organisms:

may be classified for exceptional use. Specific waters of the state designated for exceptional use are listed in section 11(b) of this rule.

(b) Where multiple uses have been designated for a body of water, the most protective of all simultaneously applicable standards will apply.

(c) A CSO wet weather limited use designation is established as a subcategory of the recreational use designation established under subsection (a). This subcategory shall be applied in accordance with section 3.1 of this rule.

(Water Pollution Control Board; [327 IAC 2-1-3](#); filed Sep 24, 1987, 3:00 p.m.: 11 IR 580; filed Feb 1, 1990, 4:30 p.m.: 13 IR 1019; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1348)

SECTION 2. [327 IAC 2-1-3.1](#) IS ADDED TO READ AS FOLLOWS:

[327 IAC 2-1-3.1](#) CSO wet weather limited use designation

Authority: [IC 13-14-8](#); [IC 13-14-9](#); [IC 13-18-3-2.5](#)

Affected: [IC 13-14-2-6](#); [IC 13-14-9-14](#); [IC 13-18-4](#)

Sec. 3.1. (a) The CSO wet weather limited use subcategory established under section 3 of this rule shall be applied to waters receiving wet weather discharges from combined sewer overflows.

(b) To receive the CSO wet weather limited use subcategory designation, a CSO community must do the following:

- (1) Perform a use attainability analysis (UAA) to change the designated use of the waterbody receiving the wet weather discharges from combined sewer overflows.
- (2) Submit the UAA to the department for approval.
- (3) Submit a long term control plan (LTCP) to the department for approval.
- (4) Fully implement the approved LTCP.

(c) The LTCP submitted to the department must:

- (1) specify the water quality-based requirements that apply to combined sewer overflows during and immediately following wet weather events; and
- (2) meet the requirements of Section 402(q) of the Clean Water Act.

(d) The department shall review the UAA concurrently with the LTCP and use the approved LTCP to satisfy the requirements of the UAA, to the extent possible.

(e) Upon approval of a UAA and LTCP, the department shall do the following:

- (1) Incorporate the approved LTCP into:
 - (A) the NPDES permit holder's NPDES permit; or
 - (B) an order of the commissioner under [IC 13-14-2-6](#).
- (2) Begin a rulemaking under [IC 13-14-9-14](#) to amend the designated use to a CSO wet weather limited use designation. The rulemaking may commence before full implementation of the approved LTCP.

(f) Upon completion of the rulemaking required under subsection (e), the department shall submit the amended recreational use designation to the U.S. EPA for approval.

(g) The water quality-based requirements for the CSO wet weather limited use designation shall:

- (1) be determined by the approved LTCP for the combined sewer system; and
- (2) remain in effect during the time and to the physical extent that the recreational use designation that applied to the waters immediately before the application to the waters of the CSO wet weather limited use subcategory is not attained but for not more than four (4) days after the date the overflow discharge ends.

(Water Pollution Control Board; [327 IAC 2-1-3.1](#))

SECTION 3. [327 IAC 2-1-10](#) IS AMENDED TO READ AS FOLLOWS:

[327 IAC 2-1-10](#) Reclassification proposals for limited or exceptional use designation

Sec. 10. (a) **Except as provided in subsection (c)**, a person who wishes to propose that a particular body of the waters of the state be considered by the commissioner for limited use or exceptional use classification must submit to the commissioner a written proposal identifying the waterbody and the proposed classification, stating the rationale for the proposal, and including any other supporting documentation. After receiving the commissioner's recommendation on a proposal, if the board determines that a waterbody is appropriate for reclassification for limited use or exceptional use, it will initiate a rulemaking for that purpose.

(b) The commissioner will consider factors such as the ~~following~~ **factors listed in subdivisions (1) and (2)** in making recommendations to the board with regard to proposals for the reclassification of a waterbody for limited use or exceptional use. These factors are listed as guidelines to provide some insight into the way the commissioner's recommendations may be made, but are not intended to be all encompassing. Irrespective of these factors, the commissioner's recommendations generally will be case-by-case determinations based on professional judgment after on-site evaluations. **The commissioner will consider factors relating to the following:**

(1) ~~Factors relating to~~ Limited use designations **such as any of the following:**

- (A) The waterway has a Q(7),(10) low flow upstream of any existing or proposed discharge of **one-tenth** (0.1) cubic feet per second or less.
- (B) Suitable habitat to support a well-balanced fish community is severely limited or absent.
- (C) The waterway is affected by irreversible conditions, natural or man-induced, ~~which that:~~
 - (i) came into existence ~~prior to before~~ January 1, 1983; ~~which~~
 - (ii) are not practicably controllable; and
 - (iii) prevent establishment of a well-balanced fish community;
- (D) The water body has no unique or exceptional features. ~~and/or~~
- (E) Potential or existing uses made of the waterbody by people in the immediate area would not be adversely affected by a limited use designation.

(2) ~~Factors relating to~~ Exceptional use designations **such as any of the following:**

- (A) The presence of **any of the following:**
 - (i) A unique or exceptional habitat or species in the waterbody.
 - ~~(B) the presence of (ii)~~ A rare or endangered species in the waterbody.
 - ~~(C) the presence of (iii)~~ Exceptional aesthetic quality in the immediate environs of the waterbody.
- ~~(D)~~ **(B)** The waterbody:
 - (i) is within the boundaries of or flows through a designated natural area, nature preserve, or state or national park or forest;
 - ~~(E) the waterbody (ii)~~ supports an excellent sports fishery; **or**
 - ~~(F) the waterbody (iii)~~ possesses exceptional quality. **or**
- ~~(G)~~ **(C)** Intensive recreational use is made of the waterbody.

(c) A person seeking to obtain a CSO wet weather limited use subcategory designation shall do so in accordance with section 3.1 of this rule.

(Water Pollution Control Board; [327 IAC 2-1-10](#); filed Sep 24, 1987, 3:00 p.m.: 11 IR 585)

SECTION 4. [327 IAC 2-1.5-5](#) IS AMENDED TO READ AS FOLLOWS:

[327 IAC 2-1.5-5](#) Surface water use designations; multiple uses

Authority: [IC 13-14-8](#); [IC 13-14-9](#); [IC 13-18-3](#)

Affected: [IC 13-18-4](#); [IC 13-30-2-1](#)

Sec. 5. (a) The following water uses are designated by the board:

- (1) ~~All~~ **Except as provided in subsection (c)**, surface waters of the state within the Great Lakes system are designated for full-body contact recreation.
- (2) All surface waters, except as described in subdivision (7), shall be capable of supporting a well-balanced, warm water aquatic community.
- (3) Where natural temperatures will permit, surface waters shall be capable of supporting put-and-take trout

fishing. All waters capable of supporting the natural reproduction of trout shall be so maintained. The following waters are designated as salmonid waters and shall be capable of supporting a salmonid fishery:

- (A) Trail Creek and its tributaries downstream to Lake Michigan.
 - (B) East Branch of the Little Calumet River and its tributaries downstream to Lake Michigan via Burns Ditch.
 - (C) Salt Creek above its confluence with the Little Calumet River.
 - (D) Kintzele Ditch (Black Ditch) from Beverly Drive downstream to Lake Michigan.
 - (E) The Galena River and its tributaries in LaPorte County.
 - (F) The St. Joseph River and its tributaries in St. Joseph County from the Twin Branch Dam in Mishawaka downstream to the Indiana/Michigan state line.
 - (G) The Indiana portion of the open waters of Lake Michigan.
 - (H) Those waters designated by the Indiana department of natural resources for put-and-take trout fishing.
- (4) All surface waters used for public water supply are designated as a public water supply. This use designation and its corresponding water quality criteria are not to be construed as imposing a user restriction on those exercising or desiring to exercise the use.
- (5) All surface waters used for industrial water supply are designated as an industrial water supply. This use designation and its corresponding water quality criteria are not to be construed as imposing a user restriction on those exercising or desiring to exercise the use.
- (6) All surface waters used for agricultural purposes are designated as an agricultural use water.
- (7) Limited use waters are designated under section 19(a) of this rule pursuant to section 18 of this rule. All waters that are designated as a limited use water under section 19(a) of this rule must be evaluated for restoration and upgrading at each triennial review of this rule.
- (8) Outstanding state resource waters are designated under section 19(b) of this rule pursuant to section 18 of this rule.

(b) Where multiple uses have been designated for a body of water, the most protective of all simultaneously applicable standards will apply.

(c) A CSO wet weather limited use designation is established as a subcategory of the recreational use designation established under subsection (a). This subcategory shall be applied in accordance with [327 IAC 2-1-3.1](#).

(Water Pollution Control Board; [327 IAC 2-1.5-5](#); filed Jan 14, 1997, 12:00 p.m.: 20 IR 1369)

SECTION 5. [327 IAC 2-1.5-18](#) IS AMENDED TO READ AS FOLLOWS:

[327 IAC 2-1.5-18](#) Designation of a waterbody as a limited use water or an outstanding state resource water

Authority: [IC 13-14-8](#); [IC 13-14-9](#); [IC 13-18-3](#)

Affected: [IC 13-18-4](#)

Sec. 18. (a) **Except as provided in subsection (f)**, a person who wishes to propose that a waterbody within the Great Lakes system be considered by the commissioner for designation as a limited use or outstanding state resource water shall submit to the commissioner a written proposal:

- (1) identifying the waterbody and the proposed designation stating the rationale for the proposal; and
- (2) including any other supporting documentation.

(b) The commissioner shall evaluate the proposal considering the following:

- (1) Waters that meet the following conditions may be considered for designation as a limited use water:

- (A) Waters that have:

- (i) naturally poor physical characteristics (that is, suitable habitat to support a well-balanced fish community is severely limited or absent) including lack of sufficient flow ($Q_{7,10}$ low flow upstream of any existing or proposed discharge of one-tenth (0.1) cubic foot per second or less);
- (ii) naturally poor chemical quality;
- (iii) irreversible man-induced conditions that came into existence ~~prior to~~ **before** January 1, 1983; and
- (iv) no unique or exceptional features.

- (B) No potential or existing uses made of the waterbody by people in the immediate area would be adversely affected by a limited use designation.

- (C) The waterbody has been evaluated by a use attainability analysis.

(2) Factors that relate to outstanding state resource water designations may include, but are not limited to, the following:

(A) The presence of **any of the following**:

~~(i)~~ A unique or exceptional habitat or species in the waterbody.

~~(B) The presence of~~ **(ii)** A rare or endangered species in the waterbody.

~~(C) The presence of~~ **(iii)** Exceptional aesthetic quality in the immediate environs of the waterbody.

~~(D)~~ **(B)** The waterbody:

(i) is within the boundaries of or flows through a designated natural area, nature preserve, or state or national park or forest;

~~(E) The waterbody~~ **(ii)** supports an excellent sports fishery; **or**

~~(F) The waterbody~~ **(iii)** possesses exceptional quality.

~~(G)~~ **(C)** Intensive recreational use is made of the waterbody.

~~(H)~~ **(D)** Designation as a natural, scenic, or recreational waterbody by the Indiana department of natural resources.

Irrespective of these factors, the commissioner's evaluation will generally be a case-by-case determination using information obtained from an on-site evaluation. If appropriate, the commissioner shall consult with the Indiana department of natural resources concerning the designation of a waterbody as an outstanding state resource water.

(c) After completion of the evaluation under subsection (b), if the commissioner determines that reclassification of the waterbody is appropriate, the commissioner shall initiate a rulemaking to include the waterbody either as a limited use water or an outstanding state resource water under section 19 of this rule.

(d) All waters that are designated as a limited use water under section 19(a) of this rule must be evaluated for restoration and upgrading at each triennial review of this rule.

(e) The department shall initiate a special designations rulemaking in accordance with the following:

(1) The special designations rulemaking shall be initiated for the **following** purposes: ~~of~~

(A) Determining **the following**:

(i) Whether any other designations in addition to:

(AA) outstanding state resource waters;

(BB) high quality waters;

(CC) limited use waters; and

(DD) outstanding national resource waters;

should be established.

~~(B) determining~~ **(ii)** The appropriate factors to consider in designating a waterbody.

~~(C)~~ **(B)** Identifying a list of waterbodies for each special designation. ~~and~~

~~(D)~~ **(C)** Specifying antidegradation implementation procedures for **the following**:

(i) Outstanding state resource waters.

(ii) Outstanding national resource waters. ~~and for~~

(iii) Any other newly established designation.

(2) ~~Prior to~~ **Before** the presentation of proposed rules on special designations to the board, the department shall consult with:

(A) other state and federal agencies; and ~~with~~

(B) interested persons within Indiana;

as appropriate. The department shall provide information to the public on the history, intent, and importance of the current outstanding state resource water designation and the list of outstanding state resource waters.

(3) The department shall seek comment, as part of the second notice on special designations, on **the following**:

(A) Adding waterbodies to the list of outstanding national resource waters. ~~on~~

(B) The specific interim antidegradation implementation procedures included in [327 IAC 5-2-11.7](#) for outstanding state resource waters. ~~and on~~

(C) Procedures for addressing increases not included in the specific exceptions listed in [327 IAC 5-2-11.7\(c\)\(2\)](#).

(4) The following statement shall be included in the second notice and shall be used as a guide during the special designation rulemaking, "The interim antidegradation implementation procedures for outstanding state resource waters in [327 IAC 5-2-11.7](#) are intended only to assure that a specific process exists to address proposed changes pending the completion of the special designation rulemaking. The board does not consider the specific procedures listed in [327 IAC 5-2-11.7](#) as a final policy statement or as binding on the board in the special designation rulemaking."

(5) The department shall present rules to the board on a schedule such that final rules may be adopted and made effective prior to **before** the expiration of [327 IAC 5-2-11.7](#).

(f) A person seeking to obtain a CSO wet weather limited use subcategory designation shall do so in accordance with [327 IAC 2-1-3.1](#).

(Water Pollution Control Board; [327 IAC 2-1.5-18](#); filed Jan 14, 1997, 12:00 p.m.: 20 IR 1410; errata filed Aug 11, 1997, 4:15 p.m.: 20 IR 3378)

SECTION 6. [327 IAC 5-2-10](#) IS AMENDED TO READ AS FOLLOWS:

[327 IAC 5-2-10](#) Applicable limitations, standards, and conditions

Authority: [IC 13-14-8](#); [IC 13-14-9](#); [IC 13-15-1-2](#); [IC 13-18-3-2.6](#)

Affected: [IC 13-11-2](#); [IC 13-18-4](#)

Sec. 10. **(a)** Each NPDES permit shall provide for and ensure compliance with all applicable requirements of the Clean Water Act (CWA), regulations promulgated under the CWA, and state law. For the purposes of this section, an applicable requirement is a statutory or regulatory requirement that takes effect under state law prior to **before** final administrative disposition of a permit. In addition to the requirements of sections 6, 8, 9, and 12 of this rule, permits shall contain terms and conditions that ensure compliance with the following requirements as applicable:

- (1) Effluent limitations and standards under Sections 301, 304, 307(a), 318, and 405 of the CWA.
- (2) Standards of performance for new sources under Section 306 of the CWA and 40 CFR 122.44(a).
- (3) In the case of a POTW, which primarily is designed and utilized for the treatment of wastewater from an industry of a particular class or category, the effluent limitations or standards that would apply under Section 301, 304, 306, 307, 318, or 405 of the CWA to the industry if it were a direct discharger. If the POTW receives sewage from domestic sources as well as industrial wastewater, the permit shall include composite (or hybrid) effluent limitations comprising the effluent:

(A) limitations or standards applicable to the industrial wastewater, as specified in this subdivision; and
effluent

(B) limitations applicable to the domestic sewage under Sections 301 and 304 of the CWA.

Such composite limitations will be cumulative for mass limitations and weighted in proportion to respective flows for concentration limitations.

- (4) Water quality standard based and other more stringent requirements. Any effluent limitations or other requirements in addition to or more stringent than promulgated effluent limitations guidelines or standards under Sections 301, 304, 306, 307, 318, and 405 of the CWA where necessary to do the following:

(A) Achieve water quality standards established by the water pollution control board or by EPA in accordance with Sections 118 and 303 of the CWA. Numeric water quality-based effluent limitations shall be established in accordance with sections 11.1 and 11.3 through 11.6 of this rule.

(B) Attain or maintain a specified water quality through water quality related effluent limits established under Section 302 of the CWA.

(C) Incorporate, in accordance with Section 301(b)(1)(C) of the CWA, any more stringent limitations, treatment standards, or schedules of compliance requirements established under federal or state law or regulations (including those adopted under interstate agreements or compacts such as the Ohio River Valley Water Sanitation Commission (ORSANCO)).

(D) Ensure consistency with the requirements of a water quality management plan approved by EPA under Section 208(b) of the CWA.

(E) Incorporate alternative effluent limitations or standards where warranted by fundamentally different factors under [327 IAC 5-6](#).

- (5) The following requirements for toxic pollutant limitations:

(A) Limitations established under subdivision (1), (2), (3), or (4) to control pollutants meeting the criteria listed in clause (B). Such limitations shall be established in accordance with clause (C).

(B) Limitations must control all toxic pollutants that **the**:

- (i) ~~the~~ commissioner determines (based on information reported in a permit application or in a notification under section 9 of this rule or on other information) are or may be discharged at a level greater than the level that is allowed under the technology-based effluent limitations applicable to the permittee under the CWA (see [327 IAC 5-5-2\(c\)](#)); or
- (ii) ~~the~~ discharger does or may use or manufacture as an intermediate or final product or byproduct;

however, limitations are not required under this subdivision merely because the discharger does or may use or manufacture a toxic pollutant under research or laboratory conditions.

(C) The requirement that the limitations control the pollutants meeting the criteria of clause (B) shall be satisfied by **limitations on**:

- (i) ~~limitations on~~ those pollutants; or
- (ii) ~~limitations on~~ other pollutants that, in the judgment of the commissioner, will ensure treatment of the pollutants specified under clause (B) to the levels required by the CWA.

(D) As used in this subdivision, "toxic pollutant" means:

- (i) a pollutant listed as toxic under Section 307(a)(1) of the CWA; or
- (ii) a pollutant or a combination of pollutants determined by the commissioner to have significant toxic characteristics when discharged into the waters of the state for organisms reasonably expected to be exposed to ~~such the~~ pollutant or pollutants.

(6) Permits issued ~~prior to~~ **before the** promulgation by the administrator of applicable effluent limitations and standards (including best management practices) under Sections 301, 304, 307, 318, and 405 of the CWA shall contain such limitations and other conditions as the commissioner determines to be necessary to carry out those provisions of the CWA under [327 IAC 5-5-2](#)(b) and Section 402(a)(1) of the CWA.

(7) Best management practices to control or abate the discharge of pollutants where:

- (A) required under Section 304(e) of the CWA for the control of toxic and hazardous pollutants from ancillary industrial activities;
- (B) numeric effluent limitations are infeasible; or
- (C) the practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the CWA.

Examples of best management practices that may be appropriate under clause (B) include proper operation and maintenance criteria and sludge-handling requirements. Examples of best management practices that may be appropriate under clause (C) include the construction of sheds over material storage piles to prevent rainfall from leaching materials from these piles and creating a source of pollution, ditching and diversion of rainfall run-off to minimize or prevent contamination from a discharger's manufacturing operations, and the use of solid, absorbent materials for cleaning up leaks and drips as opposed to washing these materials down a floor drain creating additional sources of pollution.

(8) Twenty-four (24) hour reporting. Pollutants for which the permittee must report violations of maximum daily discharge limitations under section 8(10)(C)(iii) of this rule (twenty-four (24) hour reporting) shall be listed as such in the permit. This list shall include any:

- (A) toxic pollutant or hazardous substance; or ~~any~~
- (B) pollutant specifically identified as the method to control a toxic pollutant or hazardous substance.

(9) Any conditions that the Secretary of the Army considers necessary to ensure that navigation and anchorage will not be substantially impaired in accordance with [327 IAC 5-3-10](#)(a).

(10) Additional conditions applicable to POTWs shall be as follows:

(A) Any conditions imposed in grants made by the administrator to POTWs under Sections 201 and 204 of the CWA that are reasonably necessary for the achievement of effluent limitations required under Section 301 of the CWA.

(B) Requirements under Section 405 of the CWA governing the disposal of sewage sludge from POTWs or any other treatment works treating domestic sewage for any use for which rules have been established in accordance with any applicable rules.

(C) All POTWs shall identify, in terms of character and volume of pollutants, any significant indirect discharges into the POTW ~~which that~~ are subject to pretreatment standards under Section 307(b) and 307(c) of the CWA.

(D) All POTWs must provide adequate notice to the commissioner of the following:

- (i) Any new introduction of pollutants into the POTW from an indirect discharger that would be subject to Section 301 or 306 of the CWA if it were directly discharging those pollutants.
- (ii) Any substantial change in the volume or character of pollutants being introduced into that POTW by any source where ~~such the~~ change would:

(AA) render the source subject to pretreatment standards under Section 307(b) or 307(c) of the CWA; or ~~would~~

(BB) result in a modified application of ~~such the~~ standards.

As used in this clause, "adequate notice" includes information on the quality and quantity of effluent introduced into the POTW and any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

(E) POTWs must develop and submit to the commissioner a POTW pretreatment program when required by 40 CFR 403 and [327 IAC 5-13-1](#) in order to assure compliance by industrial users of the POTW with applicable pretreatment standards established under Sections 307(b) and 307(c) of the CWA. The pretreatment program shall:

(i) meet the criteria of [327 IAC 5-13-2\(f\)](#); and

(ii) once approved, shall be incorporated into the POTW's permit.

(11) Antibacksliding requirements shall be as follows:

(A) In the case of effluent limitations established on the basis of Section 402(a)(1)(B) of the CWA, a permit may not be renewed, reissued, or modified on the basis of effluent guidelines promulgated under Section 304(b) of the CWA subsequent to the original issuance of ~~such the~~ permit to contain effluent limitations ~~which that~~ are less stringent than the comparable effluent limitations in the previous permit. In the case of effluent limitations established on the basis of Section 301(b)(1)(C), 303(d), or 303(e) of the CWA, a permit may not be renewed, reissued, or modified to contain effluent limitations ~~which that~~ are less stringent than the comparable effluent limitations in the previous permit except in compliance with Section 303(d)(4) of the CWA.

(B) A permit, with respect to which clause (A) applies, may be renewed, reissued, or modified to contain less stringent effluent limitations applicable to a pollutant if:

(i) material and substantial alterations or additions to the permitted facility occurred after permit issuance that justify the application of a less stringent effluent limitation;

(ii) information is available that:

(AA) was not available at the time of permit issuance (other than revised regulations, guidance, or test methods); and ~~that~~

(BB) would have justified the application of a less stringent effluent limitation at the time of permit issuance;

or the commissioner determines that technical mistakes or mistaken interpretations of law were made in issuing the permit under Section 402(a)(1)(B) of the CWA;

(iii) a less stringent effluent limitation is necessary because of events:

(AA) over which the permittee has no control; and

(BB) for which there is no reasonably available remedy;

(iv) the permittee has received a permit modification under Section 301(c), 301(g) through 301(i), 301(k), 301(n), or 316(a) of the CWA; or

(v) the permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities, but has nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification).

Item (ii) shall not apply to any revised waste load allocations or any alternative grounds for translating water quality standards into effluent limitations, except where the cumulative effect of ~~such the~~ revised allocations results in a decrease in the amount of pollutants discharged into the concerned waters, and ~~such the~~ revised allocations are not the result of a discharger eliminating or substantially reducing its discharge of pollutants due to complying with the requirements of the CWA or for reasons otherwise unrelated to water quality.

(C) In no event may a permit with respect to which clause (A) applies be renewed, reissued, or modified to contain an effluent limitation that is less stringent than required by effluent guidelines in effect at the time the permit is renewed, reissued, or modified. In no event may such a permit to discharge into waters be renewed, reissued, or modified to contain a less stringent effluent limitation if the implementation of ~~such the~~ limitation would result in a violation of a water quality standard under Section 303 of the CWA, [327 IAC 2-1](#), or [327 IAC 2-1.5](#) applicable to ~~such the~~ waters.

(12) For a POTW, any conditions expressly applicable to any user, as a limited co-permittee, that may be necessary in the permit issued to the treatment works to ensure compliance with applicable requirements under this subdivision. Alternatively, the commissioner may issue separate permits to the treatment works and to its users or may require a separate permit application from any user. The commissioner's decision to:

(A) issue a permit with no conditions applicable to any user; ~~to~~

(B) impose conditions on one (1) or more users; ~~to~~

(C) issue separate permits; or ~~to~~

(D) require separate applications;

and the basis for that decision, shall be stated in the fact sheet for the draft permit for the treatment works.

(b) Notwithstanding the requirements of this section, where appropriate, NPDES permits for communities with wet weather discharges from combined sewer overflows (CSO) shall contain schedules of compliance requiring the permittee to take specific steps to achieve compliance with applicable standards, limitations, and other requirements.

(c) The schedule of compliance provided for in subsection (b) shall require compliance with applicable

standards and limitations as soon as reasonably possible but may remain in effect as long as the NPDES permit requirements are in effect.

(d) The department shall, at the request of the permittee, incorporate into the NPDES permit a schedule of compliance for meeting the water quality-based requirements associated with CSOs during the period of development, approval, and implementation of a long term control plan (LTCP). The schedule of compliance may:

- (1) exceed the time frames specified in this title; and
- (2) not exceed the period specified in an approved LTCP for implementation of the LTCP.

(e) If the term of a schedule of compliance exceeds the term of the NPDES permit, as specified in an approved LTCP, the department shall continue the schedule of compliance through each successive permit term, not to exceed the time allowed under subsection (d). The permit shall specify the following:

- (1) That the schedule of compliance lasts beyond the term of the permit.
- (2) The maximum time of the compliance schedule in accordance with subsection (d).

(f) Upon request of the permittee, the department shall modify an existing NPDES permit that contains water quality-based requirements associated with CSOs to provide for a schedule of compliance.

(Water Pollution Control Board; [327 IAC 5-2-10](#); filed Sep 24, 1987, 3:00 p.m.: 11 IR 623; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1743; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1426; errata filed Aug 11, 1997, 4:15 p.m.: 20 IR 3378)

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